IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

MISC. CIVIL APPLICATION (REVIEW) NO. 976 OF 2006
IN
WRIT PETITION NO. 479 OF 1996

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
APRIL 26, 2007.

The applicant who was Respondent No. 1 in Writ Petition No.479 of 1996 decided on 23.8.2006 has filed this application for reviewing said judgment as by said judgment writ petition came to be allowed and the impugned order of School Tribunal therein came to be quashed and set aside. By that order the School Tribunal allowed appeal filed under Section 9 by present applicant and directed the management i.e. petitioners in Writ Petition to reinstate employee with all consequential benefits.

Heard Shri Qazi, learned counsel for the applicant – employee, Shri Bagde, learned counsel for respondent No.1 and Shri Kankale, learned AGP for respondents No. 2 – Education Officer.

Shri Qazi, learned counsel contends

that the School Tribunal has found that story of absconding of service by present applicant from 1.6.1991 to 4.7.1993 was not at all substantiated and also was incorrect. He points out that the School Tribunal has expressly considered provisions of clause 16 particularly requirement of principles of natural justice before terminating the employee and he further points out that admittedly no enquiry was conducted in the matter against the present applicant. He states that the applicant was in service since 1984-85 and being permanent employee, he could not have been dismissed in violation of principles of natural justice and without holding departmental enquiry. He further contends that after termination of applicant, the post has been filled in by offering it in leave vacancy to another employee. He contends that in such circumstances, the view taken by this Court is erroneous. He further states that all this could not be pointed out to this Court on 23.8.2006 because name of Shri Haq, learned counsel representing the employee did not appear in the cause list. He contends that thus irreparable loss has been caused to the applicant and hence the order needs to be

reviewed and writ petition needs to be dismissed.

Shri Bagde, learned counsel who appears for respondent No.1 in present review and original petitioner in writ petition states that grounds put forth for review are not sufficient. He places reliance upon the judgment of the Hon'ble Apex Court in the case of N.K. Prasada vs. Government of India, reported at (2004) 6 SCC 299, to contend that the present applicant was given opportunity of hearing and name of his advocate Shri Kaslikar was appearing on daily board. He contends that in such circumstances grievance sought to be made by the applicant should not be entertained particularly when termination is of the year 1994 and thereafter another employee has already been recruited. He further states that employee recruited after termination of present applicant was belonging to Nomadic Tribe category only and as such the post occupied by present applicant ought to have been treated as reserved for Nomadic Tribe category. He contends that in these circumstances, School Tribunal has not properly appreciated this position and erred in holding that post was not

reserved for Nomadic Tribe category.

Shri Qazi, learned counsel at this stage informs that the applicant – employee is in service of the very same school and Shri Bagde, learned counsel states that he was continued because of vacation of orders of interim stay granted by this Court to management on 1.7.1997.

It is an admitted position that services of applicant were terminated on 25.6.1994. The period for which he was found to be absconding as mentioned in the judgment of School Tribunal is from 10.6.1991 to 4.7.1993. The management had before the School Tribunal taken a specific stand that thereafter the applicant was again appointed from 5.7.1993 and was terminated on 25.6.1994. Before this Court the management had also filed an application submitted by the employee for giving him an opportunity to serve. The management had then also pointed out the joining report dated 5.7.1993 submitted by the applicant to the management. In view of these documents and in view of specific stand of management before the School Tribunal that there was no termination on 4.7.1993 or

5.7.1993 but termination was on 26.5.1994, the view taken in the judgment by me has been reached. It was noticed that the School Tribunal did not consider the fact that the employee was not terminated because he was absconding but was given appointment after said period and worked from 5.7.1993 to 25.6.1994. Thus, it was noticed that the School Tribunal has not considered the correctness or otherwise of the plea of management that the employee was terminated on 25.6.1994 by order dated 24.6.1994. It therefore became clear that the alleged absence from service from 10.6.1991 to 4.7.1993 did not have any bearing on termination which has taken place on 25.6.1994.

The learned counsel for the applicant has contended that the document i.e. alleged application submitted by present applicant to management for granting him employment was not filed before the School Tribunal and he further states that it is undated. However, the fact that employee was absconding up to 4.7.1993 and thereafter he has worked up to 25.6.1994 is not in dispute.

In these circumstances, I find that even if Shri Haq, learned counsel had argued the

matter on 23.8.1996, no different view could have been reached. No case is, therefore, made out for review. As learned counsel has complained of absence of opportunity of hearing while delivering the judgment on 23.8.2006, I have considered the controversy itself on merits and I have, therefore, not gone into the objection of Shri Bagde, learned counsel about the maintainability of review application.

Misc. Civil Application (Review) No.976 of 2006 is accordingly dismissed. No order as to costs.

JUDGE

*GS.